

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE:)	CASE NO. 23-40527-PWB
)	
BIANCO TOBIAS BENTON,)	CHAPTER 13
Debtor)	
)	JUDGE PAUL W. BONAPFEL

**PUBLIX EMPLOYEES FEDERAL CREDIT UNION’S MOTION FOR EXAMINATION
OF DEBTOR BIANCO TOBIAS BENTON PURSUANT TO RULE 2004 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

COMES NOW PUBLIX EMPLOYEES FEDERAL CREDIT UNION (“PEFCU”), a creditor and party in interest in the above-captioned matter, and files this Motion for Examination of Debtor Bianco Tobias Benton Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure and respectfully states as follows:

1.

Bianco Tobias Benton (“Debtor”) filed for chapter 13 relief on April 11, 2023 (the “Petition Date”).

2.

Jurisdiction over this matter and over Debtor is proper in the United States District Court for the Northern District of Georgia, Rome Division, pursuant to 28 U.S.C. §1334, 11 U.S.C. §343 and Bankruptcy Rule 2004.

3.

The United States District Court for the Northern District of Georgia, Rome Division, is a proper venue for this matter pursuant to 28 U.S.C. §1409.

4.

This motion constitutes a core proceeding which may be heard and determined by the

Bankruptcy Judge presiding over the Bankruptcy Court Unit of the United States District Court for the Northern District of Georgia, Rome Division, pursuant to 28 U.S.C. §157(b)(1) and 28 U.S.C. §157(b)(2)(A).

5.

PEFCU retains a security interest in a 2016 Mercedes-Benz CLC300, VIN WDC0G4KB6GF067351 (the “Vehicle”), by virtue of a Security Agreement and Certificate of Title.

6.

On the Petition Date, the Debtor scheduled PEFCU as a secured creditor holding a lien against the Vehicle to secure an indebtedness in the amount of \$26,197.88. The Debtor valued the Vehicle at \$28,850 on the Petition Date. In his Chapter 13 Plan that was filed on the Petition Date, the Debtor elected to surrender the Vehicle to PEFCU.

7.

The meeting of creditors pursuant to 11 U.S.C. § 341(a) was held on May 22, 2023 (the “341 Meeting”). The Debtor testified at the 341 Meeting that the Vehicle had been involved in an accident pre-petition. The Debtor agreed on the record to provide PEFCU’s counsel a copy of the police report and certain documents pertaining to an insurance claim, including a claim denial letter issued by the insurance carrier.

8.

On June 12, 2023, PEFCU’s counsel sent a letter to the Debtor’s counsel to inquire into the voluntary production of the above-referenced documents. To date, no documents have been produced and PEFCU’s counsel has not received any response to his June 12th letter.

9.

An examination pursuant to Bankruptcy Rule 2004 is the only forum available to PEFCU that will allow it to thoroughly question Debtor regarding the current whereabouts of the Vehicle, the circumstances surrounding the vehicular accident and the insurance carrier's denial of coverage, if any, and good faith in filing of the Bankruptcy Petition.

10.

PEFCU requests the Court to enter an Order providing for the examination of Debtor to occur on July 12, 2023, beginning at 10:00 a.m. at the offices of Thompson, O'Brien, Kappler & Nasuti, P.C., 2 Sun Court, Suite # 400, Peachtree Corners, GA 30092, or at such other date, time, and location ordered by the Court or mutually agreeable to the parties.

11.

PEFCU further requests the Court to enter an Order requiring Debtor to produce for inspection each document described in Exhibit "A" which is attached hereto and incorporated herein by reference on July 7, 2023, at 4:00 p.m. at the offices of Thompson, O'Brien, Kappler & Nasuti, P.C., 2 Sun Court, Suite # 400, Peachtree Corners, GA 30092, or at such other date, time, and location ordered by the Court or mutually agreeable to the parties.

WHEREFORE, PEFCU prays that the Court inquire into and grant this Motion, that Debtor be required to submit to examination by PEFCU pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure at the time and location referenced hereinabove, that Debtor be required to produce for inspection by PEFCU the documents requested, and that PEFCU have such other relief the Court deems just and proper.

RESPECTFULLY SUBMITTED, this the 20th day of June, 2023.

/s/ Michael B. Pugh

MICHAEL B. PUGH

Georgia State Bar No. 150170

For the Firm of
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Attorneys for Publix Employees Federal Credit Union

EXHIBIT "A"

**DOCUMENTS TO BE PRODUCED TO PUBLIX EMPLOYEES
FEDERAL CREDIT UNION FOR INSPECTION**

DEFINITIONS

1. The term "**any**" shall be deemed to include and encompass the words "each" and "all."
2. The term "**Communication**" shall mean any oral or written exchange of information, including, but not limited to, any telephone conversations, oral conversations other than telephone conversations, meetings, correspondence, letters, notes, reports, telegrams, telexes, facsimile transmissions, e-mail, and memoranda relating to each communication to, from, within the hearing of or witnessed by you.
3. The term "**Debtor**" shall mean BIANCO TOBIAS BENTON, including all of his agents, representatives, employees and attorneys, or any other entity such as a corporation, partnership, limited liability company, or limited liability limited partnership affiliated with BIANCO TOBIAS BENTON.
4. The term "**Document(s)**" is used in the broad and liberal sense and means written, typed, printed, recorded or graphic matter, however produced or reproduced, of any kind and description, and whether an original, master, duplicate or copy, including, but not limited to, papers, notes, accounts, books, advertisements, catalogs, manuals, publications, correspondence, computer printouts, cablegrams, mailgrams, telegrams, memoranda, letters, Communications, including inter-office, and intra-office Communications, reports, studies, analyses, pamphlets, calculations, projections, contracts, charts, plans, specifications, drawings, photographs, plats, sketches, schedules, surveys, agreements, working papers, corporate records, minutes of board of directors or committee meetings, books of account, ledger books, notebooks, vouchers, bank checks, cashier's checks, receipts for cashier's checks, cancelled checks, check stubs, bill receipts, invoices,

desk calendars, appointment books, diaries, diary entries and notes, minutes, transcriptions, sound or video recordings of any type of personal or telephone conversations or of negotiations, meetings or conferences, or things similar to any of the foregoing and all other papers, writings or physical things containing information, including preliminary drafts of or marginal notes appearing on any document, however denominated or described by the parties to whom the particular interrogatory or request is directed. Each Document shall be designated as an original, a duplicate, or a copy thereof. If you claim any document is protected by a privilege, list each document, including the date it was sent or received, the person(s) who wrote or sent the document, the person(s) to whom it was sent or received, and describe its contents.

5. “**Identify**” as used herein to refer to a natural person, means to state his or her full name, home address, home telephone number, business address, business telephone number, name and address of present and/or last known employer and any description of each such person's connection with the events in question.

6. “**PEFCU**” means Publix Employees Federal Credit Union, a federal credit union with its principal place of business being located in Lakeland, Florida.

7. The term “**Person**” means all natural persons, corporations, limited liability companies, partnerships, associations, joint ventures and all other incorporated or unincorporated governmental, public or legal entities or organizations or sub-organizations. A reference to any organization or entity shall include, where applicable, its divisions, sub-divisions, controlled agents, controlling persons, officers, directors, officials, employees, special employees, agents, or other persons acting or purporting to act on the behalf or under color of authority of the organization or entity involved.

8. “**Relating to**”, “**relates to**”, or “**related to**” means that the requested document or

information constitutes, embodies, comprises, reflects, identifies, states, deals with, comments on, responds to, describes, analyzes, contains information concerning, summarizes, or is in any way pertinent to the information requested.

9. The “**Vehicle**” means the 2016 Mercedes-Benz CLC300, VIN WDC0G4KB6GF067351.

DOCUMENTS TO BE PRODUCED FOR INSPECTION

1. All Documents relating to any and all insurance policies that insured or covered the Vehicle at any time from March 1, 2021, through the present date including, but not limited to insurance binders, declaration pages, cancellation or termination notices, filed claims, claims proceeds checks, and Communications from any insurance carrier, agent, claims adjuster, or any other Person relating to the confirmation or denial of insurance coverage for any filed claims.
2. All Documents relating to accidents that the Vehicle has been involved in during the period of time from March 1, 2021, through the present date including, but not limited to police reports, citations, witness statements, insurance claims, and Communications from any insurance carrier, agent, claims adjuster, or any other Person relating to the confirmation or denial of insurance coverage.
3. All Documents relating to the current whereabouts of the Vehicle including, but not limited to, Communications or invoices from towing or storage companies and Communications, estimates, or invoices from automobile mechanics.
4. To the extent you received any insurance proceeds relating to the Vehicle, any and all monthly or periodic statements for any deposit accounts in which the insurance proceeds were deposited from the date of deposit through the present date.

5. All Documents identifying all Persons involved in any accidents involving the Vehicle including, but not limited to, drivers, passengers, and responding officers.
6. Any and all other Documents not previously requested that relates to the indebtedness owed PEFCU, the Vehicle, any insurance coverage for the Vehicle since March 1, 2021, and any accidents involving the Vehicle since March 1, 2021.

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)	JUDGE PAUL W. BONAPFEL

CERTIFICATE OF SERVICE

This is to certify that I have electronically filed the foregoing *Publix Employees Federal Credit Union's Motion for Examination of Debtor Bianco Tobias Benton Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure* in the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to the following parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program: *Debtor's Attorney, Danielle J. Eliot, and Chapter 13 Trustee, K. Edward Safir.*

I further certify that on this day I caused a copy of this document to be served via U.S. First Class Mail, with adequate postage prepaid on the Debtor at the following address:

Bianco Tobias Benton
165 Parkmont Court
Dallas, GA 30132

This 20th day of June, 2023.

/s/ Michael B. Pugh
MICHAEL B. PUGH
Georgia State Bar No. 150170

For the Firm of
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